

9/8/2022

LAURA A. AUSTIN, CLERK
BY: s/ ARLENE LITTLE
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

LUCKY CAESAR NIERVA,

Plaintiff,

v.

Case Number: 6 : 22CV00053

TELLEZ FERNANDO RIVERA

and

RIVERA CARRIER, INC.,

Defendants.

NOTICE OF REMOVAL

Defendants Tellez Fernando Rivera and Rivera Carrier, Inc., by counsel, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Joint Notice of Removal on the following grounds:

THE COMPLAINT

1. On March 22, 2022, Plaintiff Lucky Caesar Nierva filed a Complaint in the Circuit Court for Rockbridge County, Virginia. A copy of the Complaint and Summons to Rivera Carrier, Inc. is attached hereto as **Exhibit A**.

2. Plaintiff sought leave to amend the Complaint to correct a misnomer, and the amended Complaint¹ was filed on June 13, 2022. A copy of the Order granting leave to amend is attached hereto as **Exhibit B**. A copy of the amended Complaint and Summons to Mr. Rivera are attached as **Exhibit C**.

¹ Plaintiff's amended Complaint is titled "Complaint." All subsequent references to the "Complaint" refer to the amended Complaint.

3. In the Complaint, Plaintiff alleges negligence against Defendant Tellez Fernando Rivera, while Mr. Rivera was acting in the course and scope of his employment by Defendant Rivera Carrier, Inc., and seeks damages in the amount of \$500,000. (Ex. A ¶¶ 3, 13–18).

4. On August 26, 2022, legal service on the Defendants of the documents attached as Exhibits A-C was made upon the Defendants' attorneys, through agreement of the parties.

DIVERSITY JURISDICTION

5. At all times relevant to the Complaint, Plaintiff has been and is a citizen of the State of New York.

6. At all times relevant to the Complaint, Defendant Rivera was and is a citizen of the State of Florida. At all times relevant to the Complaint, Defendant Rivera Carrier, Inc. had and has its principal place of business in the State of Florida and was incorporated in the State of Texas.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it involves citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

GROUND FOR REMOVAL

8. This Court is the proper court to exercise removal jurisdiction under 28 U.S.C. §§ 1441 and 1446 because it is the judicial district and division within which Plaintiff's Complaint was filed and is pending.

9. Removal is proper under 28 U.S.C. § 1441(b) based on diversity of citizenship because none of the parties in interest properly joined and served as defendants are citizens of the Commonwealth of Virginia, where this action originally was brought.

10. The Complaint, Order granting leave to amend the Complaint, amended Complaint, and Summonses attached hereto are the only process, pleadings and orders served on Defendants in the action to date, under 28 U.S.C. § 1446(a).

11. Removal of this case to this Court is timely under 28 U.S.C. §§ 1446(b)(1) and 1446(c)(1).

12. All Defendants join in or consent to the removal of this action under 28 U.S.C. § 1446(b)(2)(A).

13. A copy of this Notice of Removal is being filed with the Circuit Court for Rockbridge County, Virginia, and served on counsel for Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Tellez Fernando Rivera and Rivera Carrier, Inc., by counsel, respectfully provide this Notice of Removal.

Respectfully submitted,

TELLEZ FERNANDO RIVERA and
RIVERA CARRIER, INC.,

By Counsel

COUNSEL:

/s/ Marc A. Peritz
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2022, I electronically filed this document with the Clerk of Court using the CM/ECF system. I further certify that on the same date I mailed a copy of this document via first class mail and email to the following:

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